



3731

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s): Zucherman et al.  
Appl. No.: 10/037,236  
Confirm. No.: 6669  
Filed: November 9, 2001  
Title: INTER-SPINOUS PROCESS IMPLANT AND  
METHOD OF DEFORMABLE SPACER

PATENT APPLICATION

Art Unit: 3731  
Examiner: Reip, David Owen

Customer No. 23910

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Art Unit 3731, Alexandria, VA 22313-1450, on JAN - 28, 2005.

(Attorney Signature)

Melissa L. Basch, Reg. No. 56,159

Signature Date: 1-28-05

REPLY TRANSMITTAL LETTER

MAIL STOP AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Art Unit 3731  
Alexandria, VA 22313-1450

Sir:

Transmitted with this communication in connection with the above-identified application are the following:

- ☒            A **Supplemental** Response to Requirement For Restriction and Preliminary Amendment to the Office Action dated 09/23/2004.
- A Reply under 37 C.F.R. §1.116 to the Office Action dated           .
- A Petition for an Extension of Time under 37 C.F.R. §1.136.
- ☒            Applicant(s) qualify for small entity status under 37 C.F.R. §1.27.
- An Information Disclosure Statement pursuant to 37 C.F.R. §1.56.

The fee associated with this communication has been calculated as shown below:

- ☒ No fee is required with this communication.
- ☒ Small entity status of this application under 37 C.F.R. §1.9 and §1.27 has been established.
- \_\_\_\_\_ A fee for extension of time for response under 37 C.F.R. §1.136 filed within \_\_\_\_\_ month(s) after the original time for response of \$\_\_\_\_\_ is due.
- \_\_\_\_\_ A fee of \$180.00 is due for the submission of the accompanying Information Disclosure Statement.
- \_\_\_\_\_ A fee for addition of claims under 37 C.F.R. §1.16 is due as follows:

FEES	Claims Remaining After Amendment	Highest Number Previously Paid For	Present Extra	Rate Small Entity/Other Than Small Entity		Total
TOTAL CLAIMS (37 CFR 1.16(c))	<u>21</u> * -	<u>21</u> **	<u>0</u>	X \$ 25.00 X \$ 50.00	0.00 \$	
INDEPENDENT CLAIMS (37 CFR 1.16(b))	<u>6</u> * -	<u>6</u> ***	<u>0</u>	X \$ 100.00 X \$ 200.00	0.00 \$	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIMS (37 CFR 1.16(d))				+ \$180.00 + \$360.00	0.00 \$	
				TOTAL	\$0.00	

\* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

\*\* If the "Highest Number of Previously Paid For" in this space is less than 20, enter "20".

\*\*\* If the "Highest Number Previously Paid For" in this space is less than 3, enter "3".

The total fee required with this communication is \$0.00 and is to be paid as follows:

\_\_\_\_\_ Please charge Deposit Account No. 06-1325 in the amount of \$\_\_\_\_\_. A duplicate copy of this authorization is enclosed.


\_\_\_\_\_ A check in the amount of \$\_\_\_\_\_ is enclosed.

✓

The Commissioner is hereby authorized to charge any deficiencies or credit overpayment to Deposit Account No. 06-1325. A duplicate copy of this authorization is enclosed.

Respectfully submitted,

Date: 1/28/05

By:   
Melissa L. Basch  
Reg. No. 56,159

Customer No. 23910  
FLIESLER MEYER LLP  
Four Embarcadero Center, Fourth Floor  
San Francisco, California 94111-4156  
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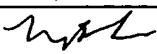
Art Unit: 3731

Examiner: Reip, David Owen

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Amendment, Commissioner for Patents, P.O. Box 1450, Art  
Unit 3731, Alexandria, VA 22313-1450, on  
1-28-05

 (Signature)

Melissa L. Basch, Reg. No.: 56,159

Signature Date: 1-28-05 2005.

SUPPLEMENTAL RESPONSE TO REQUIREMENT FOR RESTRICTION  
AND PRELIMINARY AMENDMENT

MAIL STOP AMENDMENT

Commissioner for Patents

P.O. Box 1450

Art Unit 3731

Alexandria, VA 22313-1450

Sir:

Election:

This communication is a supplemental response that amends our previous  
response, filed on November 23, 2004, to the Office Action dated September 23, 2004.

It is respectfully submitted that Species A is elected without traverse. As  
indicated by the examiner, species A includes Figs. 1a-8b.

The examiner instructed that, should applicant select species A, a further election  
of species must be made. Accordingly, applicant further respectfully submits that species  
7 is elected, which corresponds to Figure 7.

The combined selection of species A/7 reads on the following claims: 60-67, 97, 106. Accordingly, the indicated claims are elected and the rest are cancelled. However, Applicant reserves the right to prosecute additional claims in any pending or future application(s).

New claims 108-118 are added, which claim the elected invention.